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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,383	08/28/2001	Dana C. Bookbinder	SP01-243 / 9272-7	6010
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MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627				
EXAMINER HOFFMANN, JOHN M				
ART UNIT		PAPER NUMBER		
1731				

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/941,383

Applicant(s)

BOOKBINDER ET AL.

Examiner

John Hoffmann

Art Unit

1731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 48.

Claim(s) objected to: _____.

Claim(s) rejected: 1-12, 38-43 and 47.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

John Hoffmann
Primary Examiner
Art Unit: 1731

8-23-04

Continuation of 2. NOTE: The new issues are whether the changes to claims 1, 41-43 and 47 would make the claims allowable..

Continuation of 5. does NOT place the application in condition for allowance because: The amendment is not entered. Regarding Claim 48: as indicated by Applicant, the Office Action Summary is incorrect. Claim 48 is not rejected - Claim 48 is allowed. It is asked why Koaizawa was not previously applied: The Office does not have the resources to reject broad claims (such as originally presented) over all known references. Regarding the terms "plate" and "washer": Applicant argues what the definition of the terms are - however no evidence is supplied. Arguments cannot take the place of evidence. It is further argued that the rejection improperly disregards integral structure - because Nerwin is directed to different issues. This is not convincing because the present rejection refers to on the general concept behind Nerwin: That various elements integrated into a whole - still results in the elements. Furthermore, when it comes to the "plate" - it is argued that a flange is not a "plate" in accordance with common usage of the term. (In addition to no evidence as to what the common usage of plate is): Claims are to be interpreted in light of the specification: there is nothing in the specification that indicates that the "plate mounted on a...tube" would exclude a plate that is integrally mounted on a tube.